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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/673,592   | 09/29/2003  | Alfed D. Commins     | 2863.2.2.1          | 2408             |
| 28049  | 7590        | 06/08/2004           | EXAMINER            |                  |
| PATE PIERCE & BAIRD<br>215 SOUTH STATE STREET, SUITE 550<br>PARKSIDE TOWER<br>SALT LAKE CITY, UT 84111 |             |                      |                     | VARNER, STEVE M  |
| ART UNIT   |             | PAPER NUMBER         |                     |                  |
|  |             | 3635                 |                     |                  |

DATE MAILED: 06/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |                  |
|------------------------------|-----------------|------------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s)     |
|                              | 10/673,592      | COMMIN, ALFED D. |
|                              | Examiner        | Art Unit         |
|                              | Steve M Varner  | 3635             |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 29 September 2003.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-27 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-11 and 13-27 is/are rejected.

7) Claim(s) 12 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____ .                                  |

## DETAILED ACTION

### ***Claim Objections***

In claim 13, line 2, "having a normal perpendicular thereto," is unclear.

The first and second support members and the anchoring device are not claimed in combination with the flanges and base in claims 1-18; therefore, relationships to them need not be found. Likewise, the first and second members and anchor are not claimed in combination with the flanges and base in claims 25-27; therefore, relationships to them need not be found.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-8, 13-27, are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6625945, Commins. Although the conflicting claims are not identical, they are not patentably distinct from each other because.

Regarding claims 1-4, Commins '945 claim 1, claims a first flange having securement apertures therethrough configured to receive fasteners; a second flange having securement apertures configured to receive fasteners; a base connecting the first and second flanges and having an aperture, wherein the securement apertures are arranged in a pattern selected to receive fasteners therethrough, the number and size of the securement apertures may be selected to distribute the tensile load evenly without operational damage to the flange.

Regarding claims 5, 6, Commins '945 claim 1, claims the basic claimed structure. Commins '945 claim 1, does not claim the fastener is selected from a screw and a nail. Screws and nails are well known in the art. It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use a screw or nail since they are common fasteners, which could be used to fasten the flange.

The size, number, and locations of the securement apertures may be selected to resist yielding of the first flange, due to the fasteners proximate the securement apertures and under the forces induced by the tensile load, when the tensile load is insufficient to fail the base and first flange away from the apertures.

Regarding claim 7, Commins '945 claim 1, claims the basic claimed structure. Commins '945 claim 1 does not claim at least one of the securement apertures is further sized and shaped to receive a fastener at any of a plurality of angles with respect thereto. Different sized fasteners are well known in the art. A suitably sized fastener would be received at a plurality of angles. It would have been obvious to use a suitably sized fastener, which would make the securement apertures sized and shaped to

receive the fastener at a plurality of angles in the structure of Commins '945 to strengthen the connection.

Regarding claim 8, the first support member is not claimed.

Regarding claim 13, Commins '945 claim 1 claims the first flange has a principal surface, the first flange has a second surface oriented at an angle with respect to the principal surface.

Regarding claim 14, the thickness of the first flange and the number and size of securement apertures may be selected to balance the tensile load in the flange due to the tie down, and the tensile load in the securement region of the flange due to the fasteners.

Regarding claim 15, Commins '945 claim 1, claims the basic claimed structure. Commins '945 claim 1 does not claim at least one of the securement apertures is further sized and shaped to receive a fastener at any of a plurality of angles with respect thereto. Different sized fasteners are well known in the art. A suitably sized fastener would be received at a plurality of angles. It would have been obvious to use a suitably sized fastener, which would make the securement apertures sized and shaped to receive the fastener at a plurality of angles in the structure of Commins '945 to strengthen the connection.

Regarding claim 16, the first support member is not claimed.

Regarding claims 17, 18, Commins '945 claim 1 claims the basic claimed structure. Commins claim 1 does not claim an insert positioned to fit proximate the base. Wolfson shows an insert positioned to fit proximate the base (40) (Fig. 2). It

would have been obvious to one of ordinary skill in the art at the time the present invention was made to use an insert as in Wolfson in the structure of Commins '945 to increase the structural integrity of the connection.

The base may be formed to have an increased section modulus with respect to the first flange.

Regarding method claims 19-24, the claimed methods are the obvious methods of anchoring a wall of a building using Commins '945 claimed modified balanced multi-stud hold down by providing a hold down, securing the first flange, securing the second flange, admitting the anchoring device, tightening a fastener, and admitting a securement mechanism

Regarding claim 25, Commins '945 claim 1, claims a first flange having an aperture therethrough; a second flange, a base connecting the first and second flanges and having a penetration;

Regarding claim 26, the anchor is not claimed.

Regarding claim 27, the first and second support members are not claimed.

Claims 9-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6625945, Commins in view of Wolfson.

Regarding claim 9-11, Commins '945 claim 1 claims the basic claimed structure. Commins claim 1 does not claim an insert positioned to fit proximate the base. Wolfson shows an insert positioned to fit proximate the base (40) (Fig. 2). It would have been obvious to one of ordinary skill in the art at the time the present invention was made to

use an insert as in Wolfson in the structure of Commins to increase the structural integrity of the connection.

The base may be formed to have an increased section modulus with respect to the first flange, which may be increased by a mechanism selected from increasing the thickness thereof with respect to the first flange, and bending a portion thereof away from a second portion thereof.

### ***Claim Objections***

Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 6, 14, 18, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4, 6, 14, 18, recite desired results without the structure to attain the results.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 13, 16, 17, 25-27, are rejected under 35 U.S.C. 102(b) as being anticipated by Wolfson.

Regarding claims 1-3, Wolfson shows a first flange (one of 18's) having securement apertures therethrough configured to receive fasteners (22); a second flange (other one of 18's) having securement apertures configured to receive fasteners (22); a base (planar member through which 36 goes) connecting the first and second flanges and having an aperture (36), wherein the securement apertures are arranged in a pattern selected to receive fasteners therethrough.

Regarding claims 5, Wolfson shows the fastener is selected from a screw (22) and a nail (Fig. 1, 2).

Regarding claim 13, Wolfson shows the first flange (18) has a principal surface; the first flange has a second surface (edge of 18) oriented at an angle with respect to the principal surface.

Regarding claim 16, the first support member is not claimed.

Regarding claims 17, Wolfson shows an insert positioned to fit proximate the base (40) (Fig. 2).

Regarding claim 25, Wolfson shows a first flange (one of 18's) having an aperture therethrough; a second flange (other one of 18's), a base (planar portion through which 36 goes) connecting the first and second flanges and having a penetration (36);

Regarding claim 26, the anchor is not claimed.

Regarding claim 27, the first and second support members are not claimed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-24, are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolfson.

Regarding method claims 19-24, the claimed methods are the obvious methods of anchoring a wall of a building using Wolfson's modified holddown apparatus for a shear wall by providing a hold down, securing the first flange, securing the second flange, admitting the anchoring device, tightening a fastener, and admitting a securement mechanism.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bugbee et al. shows a light wood truss connector. Gib et al. shows a standoff timber base connection. Liem shows a wall construction system.

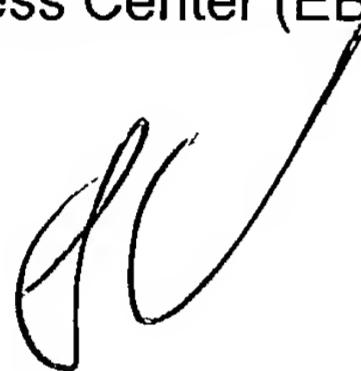
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SV



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